

REPORT - PLANNING COMMISSION MEETING
September 26, 2002

Project Name and Number: Cates Variance (PLN2003-00006)

Applicant: Bruce W. Cates

Proposal: To consider an appeal of the Zoning Administrator's decision to allow a variance to building setback and parking requirements that would otherwise be required for the relocation, preservation and development of a single-family residence.

Recommended Action: Uphold the Zoning Administrator decision to approve the project based on its Findings and Revised Conditions of Approval.

Location: 250 J Street in the Niles Planning Area

Assessor Parcel Number(s): 507-0305-030-00

Area: 2,500 square foot residential lot (50 feet by 50 feet)

Owner: Fay Louie (Applicant in process of purchasing site)

Agent of Applicant: None

Consultant(s): None

Environmental Review: This project is categorically exempt per California Environmental Quality Act (CEQA) under Section 15303 as it relates to the construction of a single-family residence.

Existing General Plan: Low Density Residential (3-5 DU/AC)

Existing Zoning: R-1-8, Single Family Residential

Existing Land Use: Vacant

PUBLIC HEARING NOTICE: Public hearing notification is applicable. A total of 71 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Second Street, Third Street, and Victory Lane. The notices to owners and occupants were mailed on September 16, 2002. A Public Hearing Notice was delivered to The Argus on September 11, 2002 to be published by September 16, 2002.

EXECUTIVE SUMMARY: The Planning Commission is being asked to consider an appeal of the Zoning Administrator's approval of Variance that is necessary for the relocation, preservation and development of a single-family residence at 250 J Street in the Niles Planning Area. Based on the information provided in this report, the Zoning Administrator determined that the literal enforcement of applicable sections of the Zoning Ordinance would involve practical difficulties or cause undue hardship unnecessary to carry out the project's spirit and purpose. Accordingly, on August 30, 2002, the Zoning Administrator approved a variance to (1) Section 8-2605(c), front yard setback; (2) Section 8-2605(d), side yard setback; (3) Section 8-2605 (g), rear yard setback; (4) Section 8-22204(f), setback requirement for detached carport; and (5) Section 8-22003, 2 covered off-street parking spaces for the relocation, restoration and preservation of a single-family residence and new carport as indicated in Exhibit "A", subject to Findings and Conditions of Approval in Exhibit "B".

BACKGROUND: The site in question, a legal lot created and recorded before the City's incorporation with the Office of the County Recorder on December 31, 1888. The lot is approximately 2,500 square feet in size (50 feet wide and 50 feet deep) and fronts on J Street and abuts an alleyway (Victory Lane) to the left as one faces the lot from J Street. On March 6, 1981, the property owner, Fay Louie, was notified by the City to abate a dilapidated barn structure that was found to be

in disrepair, posing an imminent danger to the public. The property owner abated the barn and subsequently requested a variance to develop and reuse the site for a single-family residence.

On April 21, 1981, the Zoning Administrator approved Variance V-81-7 to allow the construction of a two-story 1,125 square foot residence on the site by reducing the setback requirements of the then R-1-6 zoning district. It was the Zoning Administrator's finding that the literal enforcement of the Fremont Municipal Code (FMC) for the development of a single family residence on this site would involve practical difficulties unnecessary to carry out the spirit and purpose of applicable provisions for the site. The variance permitted the two-story, 1,125 square foot single-family residence to utilize: (a) a reduced front yard setback from 20 feet to 12 feet; (b) a reduced side street side yard setback from 10 feet to 5 feet; and (c) a reduced rear yard setback from 25 feet to 5 feet.

No project was ever submitted by the property owner to develop the site with a single-family residence. After the dilapidated structure was abated, the site was left vacant and used to park vehicles. Community Preservation has issued warnings to remove storage of vehicles on the site.

The Proposed Structure: A Circa 1910 Colonial Revival Single-Family Residence

The proposed structure is described as a Circa 1910 Colonial Revival single-family residence. The structure is approximately 800 square feet and was originally located at 320 I Street on a parcel two acres in size. Eventually, the parcel was sold to a residential developer, resulting in the relocation of the structure. In October of 1995, the applicant, Bruce W. Cates, who anticipated rehabilitating the structure to be used as a residence and partial artist studio, relocated the structure to its present location at 37753 Niles Boulevard. Currently, the structure is boarded up with an existing 6-foot wood fence (with gate) fronting Niles Boulevard and a rear chain-link, cyclone fence at its rear lot line to secure it.

On October 5, 1995, the Historical Architectural Review Board (HARB) considered and approved the applicant's request to restore the structure at 37753 Niles Boulevard. It was the applicant's intent to remodel the house by adding an eight-foot wide porch/deck on the front and side and an art studio partially below grade. The architectural design of the structure was to be "Victorian" (with elements of Queen Anne and Folk Victorian) with spindle work and railings on the porch and a douglas fir door with stained glass design. The building would be restored to all applicable zoning and building regulations. The applicant was unsuccessful in carrying out this project and the structure presently remains situated on temporary wood piers.

Due to the failure to complete the project as required, which resulted in a public nuisance, the City took action to notify the applicant to either (a) start construction to legalize the structure by obtaining appropriate building permits, (b) relocate the structure to an appropriate site or (c) demolish the structure on the property. A "Settlement Agreement" reached between the applicant and the City afforded the applicant six months, on or before September 8, 2002, to resolve this situation, otherwise the City would take action to remedy the situation without further notice to the applicant (a \$5,000 security bond posted at the time of the relocation would be used in this case, if necessary). As indicated in the latter section of this report, under "Project Analysis", the Variance land use entitlement requested herein does not, nor is intended to, modify or supercede the "Settlement Agreement" dated March 8, 2002, between the applicant and the City for property located at 37753 Niles Boulevard or any subsequent "Settle Settlement" agreement entered into between the applicant and the City.

The Niles Density Study: The Rezoning of Niles Residential Area

In September of 1997, Council approved a rezoning of areas in the historic core, including the site in question. It was found by Council that the zoning and land use designations of R-1-6 and 5-7 DU/AC, respectively, were inappropriate and incompatible with the balance of the neighborhood and its character. As such, the area was rezoned to R-1-8 and general plan land use changed to 3 to 5 DU/AC. It was strongly believed that the R-1-8 zoning district and 3 to 5 DU/AC general plan density reflected the "as built" character of Niles, and that such zoning and density would also be appropriate for a large scale development should the area suffer from fire or earthquake damage.

The study conducted by staff identified that the impacts of the proposed rezoning would deem many lots legal "non-conforming" in the Niles area and cause the requirement of variances to allow for additions to existing structures or the construction of entirely new ones. Further, it was noted that the unique character of Niles would provide a strong basis for allowing variances in the future, but that each case would be individually evaluated by the Zoning Administrator.

Appeal of the Zoning Administrator's decision

Staff received two appeals regarding the project from the site's abutting neighbors. On September 3, 2002, Bob and Marion Howard appealed the Zoning Administrator decision, finding that the project's development would result in drainage problems on their lot and that the project may be left uncompleted as it is at 37753 Niles Boulevard. On September 6, 2002, staff received a second appeal from Luther and Anna Roberts who, while also noting that the project may not be completed as proposed, are concerned with the reduced rear yard setback, allowing the house to be five feet from the rear lot line instead of the standard thirty feet. Staff addresses their concerns under the "Appeal of the Zoning Administrator's Action" section of this report.

PROJECT DESCRIPTION: The applicant proposes to relocate, restore and preserve the aforementioned 800 square foot single-family residence currently located at 37753 Niles Boulevard to a site located at 250 J Street. The proposed project requires Zoning Administrator approval of a variance from the general R-1-8 setback requirements and parking standards applicable to the site to reasonably develop a single-family residence on the site. The site's lot area, depth and width are substandard and, according to the applicant, infeasible to develop if conforming to general standards. In summary, the letter received from the applicant stated that the site's lot area, width and depth are well under the minimum size and dimensions as established by the R-1-8 zoning district. Additionally, the applicant indicated that there are several residences in the area that, and especially within a 300-foot radius, are built on substandard lot sizes, utilizing substandard, less restrictive setbacks. For those reasons, the applicant believes a variance is warranted for the relocation.

It is proposed that the 800 square foot Circa 1910 Colonial Revival single-family residence would be located on the lot in accordance with Exhibit "A". The single-story structure comprised of two bedrooms and one bath would be converted to a three bedroom and two bath residence by the inclusion of a new half basement directly below the proposed location of the residence. The half basement is proposed to be a depth no greater than five feet below existing grade. The final height of the structure will be 20'4" from existing grade. The proposed main entrance to the residence would be from an existing raised front porch and new stairwell, while a secondary entrance is located at the rear side of the residence to the kitchen. Entrance to the new basement will be internally through the kitchen and externally by a depressed exterior stairwell located at the left (north), rear side of the residence.

Like the variance previously approved for the subject site at 250 J Street, the request herein specifically would allow the applicant to utilize reduced setbacks than otherwise would be required. The proposed residence is actually a 1½-story structure. The ordinance does not specifically address standards for 1½-story structures, but given that the structure is greater than one-story, staff finds that it is appropriate to apply the two-story standards to the project in this case. The following table represents the proposed setback versus the required setback:

250 J Street Lot Compared to Standard Lot in R-1-8 Residence District		
	Existing at 250 J Street	General Standard
Site Area	2,500 Square Feet	8,000 Square Feet
Site Width	50 Feet	70 Feet
Site Depth	50 Feet	100 Feet
Proposed Setbacks for Relocation of Residence Compared to General Setback		
	Proposed Setback at 250 J Street	General Standard
Front Yard	8 Feet	25 Feet
Side Yard for corner lot	3' (alleyway side) and 8'	12.5' (alleyway side) and 8'
Rear Yard	5'	30'

The request of the variance would ultimately allow the applicant to relocate the structure with the proposed setbacks listed above.

Additionally, the applicant requests a variance from Section 8-22003 [Required parking spaces by type of use.] of the FMC. This section requires that a single-family dwelling must be provided with a minimum of two covered, off-street parking spaces, e.g., a garage or carport for resident's use. The applicant proposes, however, only one standard sized, covered parking space by the inclusion of a detached carport at the left side of the residence as it would be difficult to meet the standard due to the site's lot area deficiency. The carport is designed to match the appearance, materials and

colors of the residence. A parking space in tandem on the driveway can also be used for parking, allowing for a total of two parking spaces onsite.

PROJECT ANALYSIS: Staff finds that the proposed relocation, restoration and preservation of the Circa 1910 Colonial Revival single-family residence at this site is appropriate. The site's general plan designation and zoning allows for the use of a single-family residence. The design and appearance of the historic structure are consistent with the residential neighborhood on J Street and the Niles area in general. Staff is recommending granting of the variance based on the following analysis:

Article 29 [Variances] of the FMC, pursuant to the authority of Section 65906, Chapter 4 of the Planning and Zoning Law Government Code, allows the City's Zoning Administrator to grant variances to sites only when,

"because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and zone in which such property is situated."

As further described in Findings for Approval, Exhibit "B", staff finds that due to the deficient size and shape of the site in question, as indicated in the table under the "Proposed Project" section of this report, the approval of a variance to the following sections is warranted: (1) Section 8-2605(c), front yard setback; (2) Section 8-2605(d), side yard setback; (3) Section 8-2605 (g), rear yard setback; (4) Section 8-22204(f), setback requirement for detached carport; and (5) Section 8-22003, 2 covered off-street parking space standard.

The approval of the variance would allow for the preservation of the historic structure. From the point of view of neighborhood compatibility, staff believes the structure would contribute significantly to the neighborhood by providing extended historical interest and additional integrity to the collective appearance and characteristic of the neighborhood. However, the grounds for the approval of this variance, in conformance to the State statute, cannot not be based on historic preservation, but for reasons and conditions related to the subject site.

Staff has been working with the applicant in terms of the location of the residence and new carport on the site. Staff finds that the proposed two parking spaces, one covered and one uncovered in tandem, are appropriate for the site, given its limited lot area. Staff suggests that the stairwell to the front porch face the street, rather than to the left side of the residence from the driveway. (Condition 7) This should improve the front appearance of the residence as well as be more consistent with the appearance of other residences in the neighborhood. In addition, staff suggests that the design, material and colors, as well as roof pitch and material, of the carport match that of the residence. (Condition 6) The driveway shall be paved as appropriate, adhering to the City's driveway design standard for a 10-foot wide driveway. (Condition 6) The walkway leading to the front porch shall be separate from the driveway fronting J Street. Finally, the design and restoration of the residence shall not further compromise the character of the structure, and that all proposed detail work shall be approved during the Development Organization (D.O.) review. (Condition 9)

Overall, the appearance and location of the residence, with the inclusion of the new habitable basement and carport, are appropriate on the site. However, staff is concerned that the structure may be left unfinished as it presently is at 37753 Niles Boulevard, and therefore conditions the project accordingly. Approval of the variance requires that the applicant submit to the City a "Letter of Intent" outlining all proposed work with an anticipated completion time schedule to the satisfaction of the City's Zoning Administrator. Such letter must also be signed and agreed upon by the applicant as well as by the present property owner(s) of 250 J Street. The applicant will be afforded 30 days from the approval of this Variance to submit complete working plans of the proposed project to the City for the D.O. review. **This Variance and its Findings and Conditions of Approval are NOT intended to modify or supercede the "Settlement Agreement" dated March 8, 2002 between the applicant and City regarding property located at 37753 Niles Boulevard. The timeframes provided in these conditions of approval [Exhibit "B"] do not extend the applicant's time to comply, or excuse the applicant's failure to timely comply with the terms of the "Settlement Agreement" dated March 8, 2002 between the applicant and City for property located at 37753 Niles Boulevard or any subsequent "Settlement Agreement" entered into by the applicant and the City.**

General Plan Conformance

The existing General Plan land use designation for the project site is Very Low Density Residential (3-5 DU/AC). The proposed project is consistent with the existing General Plan land use designation for the project site because the lot is designated for a single-family residential use. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

Land Use (LU) Goal 1:	<i>New housing development while conserving the character of the City's existing single-family residential neighborhoods.</i>
Housing Goal 2:	<i>The City shall continue to apply building codes and design standards to ensure that development is of high quality and consistent with the scale and character of the community.</i>

The above general plan goals are carried out by the project. The proposed project conserves the character of the Niles neighborhood in that it is consistent with the scale and character of the community.

Zoning Regulations

The R-1-8 development site and building standards would generally apply to the construction of a single-family dwelling at 250 J Street. However, given the shape and size of the lot, a variance to those standards will allow the applicant to utilize reduced setbacks and provide one covered parking space. All other development requirements, such as federal, state and local building codes, must be satisfied. The applicant is required to submit plans to the City's Development Organization to ensure that standards not modified herein are in compliance with these regulations for building permit issuance.

Parking: Section 8-22003 provides that a single-family dwelling must be provided with 2 covered off-street parking spaces. As mentioned earlier, staff supports the Variance to allow the proposed parking of one covered space and one uncovered space, in tandem.

Open Space/Landscaping: The applicant is required to install landscaping in the front, side and rear yard for the residence. Such landscaping shall be automatically irrigated and shall include tall growing trees at the rear of the site to mitigate privacy concerns of the property abutting to the rear. Such trees, landscaping, and irrigation system will be subject to review and approval by the City's Development Organization.

Approximately 658 square feet or 26.3% of the site's area provides private open space, exclusive of the front yard area.

Circulation/Access Analysis: The project site is located on the southeast corner of J Street and the private alley, Victory Lane. Vehicular and pedestrian access to the site is provided via a proposed ten-foot wide driveway and a sidewalk connection from J Street to the front porch. Street is an existing minor residential street with a right-of-way width of eighty feet (80') and a planned pavement width of forty-eight feet (48'). The project frontage is currently unimproved. In accordance with the Street Right-of-Way and Improvement Ordinance, the applicant is required to install complete street improvements to J Street across the project frontage.

Grading & Drainage: The residence will be designed to fit the existing topography of the site (J Street slopes down to the south) and that only minor grading will be permitted to provide proper and adequate drainage for the lot. Site grading will not obstruct natural flow from abutting properties or divert drainage from its natural watershed. The project site is moderately sloped to the southwest, following the existing grade of J Street. The residence will be designed to fit the existing topography of the project site. Minor grading outside of the building envelope and installation of an on-site storm drain system, may be required for the project to conform to the Grading Ordinance. Grading and drainage is subject to review and approval of the City during Development Organization.

Urban Runoff Clean Water Program: The applicant will be required to conform to the City's Urban Runoff Clean Water Program requirements. Conditions of approval are included in the Conditions of Approval to reflect this requirement.

DEVELOPMENT IMPACT FEES: This project will be subject to Citywide Development Impact Fees. These fees may include fees for fire protection, park facilities, capital facilities and traffic impact. These fees shall be calculated at the fee rates in effect at the time of building permit issuance.

WASTE MANAGEMENT: This project involves single-family dwelling construction and shall be subject to the provisions of the California Integrated Waste Management Act of 1989 (AB939). The Act requires that 50% of the waste generated in the City of Fremont be diverted from landfill sites by the year 2000. Additionally, the project is subject to the City's Source Reduction and Recycling Element (1992), an Integrated Waste Management Ordinance (1995), and a Commercial/Industrial Recycling Plan (1997). These documents require that any new project for which a building permit application is submitted to include adequate, accessible, and convenient areas for collecting and loading trash and recyclable materials. Any trash/recycling enclosure for the project shall be designed in a manner to be architecturally compatible with nearby structures and with the existing topography and vegetation in accordance with such standards.

ENVIRONMENTAL ANALYSIS: This project is categorically exempted per the California Environmental Quality Act (CEQA) under Section 15303 as it relates to the construction of a single-family residence.

APPEAL OF ZONING ADMINISTRATOR'S ACTION: The applicant's abutting neighbors, the Howards and the Roberts, appealed the decision of the Zoning Administrator on September 3, 2002 and on September 6, 2002, respectively. These letters are attached as Exhibit "C" to this report. The following summary indicates the neighbor's specific grounds for and/or questions relating to the appeal and a staff response to each.

Appeal of Bob and Marion Howard, 37884 Third Street

- (a) Additional information [regulations] is necessary to protect problems that may be associated with the development, particularly drainage problems.

Staff response: Initially, the applicant proposed a retaining wall abutting property owned by the Howards. However, after reviewing the project, staff denied the request for the retaining wall and required the applicant to design the residence to fit the existing topography of the lot.

The project site follows the slope of J Street, in that it slopes to the southwest, towards the Howard property. Currently, any storm runoff from the site likely drains onto the Howard Property and J Street. The development of the project site will improve the existing drainage situation due to installation of an on-site storm drain system and street improvements to J Street. Minor grading and installation of the aforementioned improvements will prevent storm water runoff from the project site from crossing onto the Howard property. Prior to issuance of building permits, grading and drainage will be reviewed by the City's Development Organization to insure conformance with all applicable codes and policies.

- (b) The project will not be completed as it currently is at Niles Boulevard, resulting in a fire hazard and attraction for homeless individuals in Niles.

Staff response: Staff is aware of the current situation at 37753 Niles Boulevard and included Condition #1 that requires the applicant to submit a "Letter of Intent" outlining the work, in detail, that must be completed for the relocation, restoration and complete development of the residence to the review, approval and satisfaction of the Zoning Administrator. The applicant shall be cognizant of safety measures while relocating the structure to its new location. The applicant will obtain all necessary building permits, such as encroachment permits for the relocation of the structure. A security fencing of no less than 6' feet in height shall be placed on the perimeter at 250 J Street to bar any unauthorized persons, especially young children, from entering the site. The applicant is afforded thirty (30) days to submit complete working plans to the Development Organization for review and approval. However, it should be noted that this condition is entirely based on the approval of the Variance land use entitlement and NOT the "Settlement Agreement" dated March 8, 2002 between the applicant and City regarding property located at 37753 Niles Boulevard.

There is currently a Settlement Agreement between the City and the applicant regarding the nuisance created by the structure on his Niles Boulevard property. This agreement authorizes the City to demolish the structure if certain conditions are not met. The applicant has agreed in principle to a

similar agreement for purposes of preventing the project site (the J Street property) from becoming a nuisance. The Commission will be advised if this agreement is executed prior to the public hearing of this appeal on September 26, 2002. Any Settlement Agreement between the City and the applicant is, however, an agreement entered into as the result of code enforcement action, and is not a consequence of approval of the Variance.

- (c) The applicant may not have funding to complete the project as proposed.

Staff response: In conformance with the State statute, the Zoning Administrator is authorized to approve a variance when s/he finds special circumstances applicable to the property, such as the lot's size, shape, topography, location or surroundings, deprives such property of privileges enjoyed by other property in the vicinity and zone because of its development zoning standards. The approval or denial of a variance, therefore, cannot be based or conditioned upon the funding of a project.

- (d) The applicant does not own the property. Is Fay Louie stated [entitled] to the variance?

Staff response: If a variance is approved for a lot [site], the entitlement runs with the land in perpetuity, unless the Zoning Administrator, Planning Commission or City Council revokes it. The property owner(s) and its successors in interest of said lot are therefore entitled to the variance.

- (e) Approval of the Variance will add to the parking deficiency in the area.

Staff Response: The applicant will be required to incorporate two parking spaces onsite (one uncovered). Staff believes that there is adequate parking provided for the use.

- (f) The lot's area is insufficient in accommodating such a structure.

Staff Response: The property owner states that the size of the lot is insufficient to accommodate a single-family residence. Staff agrees that the lot does not conform to the requirements of the Zoning Ordinance. However, given the unusual circumstance of the lot legally approved in 1888, and that the use of the lot as a single-family residence in compliance with the zoning and general plan, staff finds that the use is appropriate and the circumstance applicable to the site warrants a variance to allow such use. Staff believes that the site can reasonably accommodate the proposed project. Conditions of Approval in Exhibit "B" will ensure that the applicant and property owner will acquire all necessary building permits for the relocation and completion of the residence.

Appeal of Luther and Anna Roberts, 37890 Third Street

- (a) The proposed project may be left unfinished.

Staff response: Please see "Staff Response" to Howards Appeal (b) above.

- (b) The unit will develop into multiple (2) dwellings.

Staff response: Staff has incorporated a condition in the "Conditions of Approval" that the residence may only be occupied and used as a single-family residence. Additionally, a "Deed Restriction" will be recorded against the property with the County Recorder's Office to acknowledge that the residence is approve for the use as a single-family residence and not a duplex. (Condition 41)

- (c) The subject site may be littered with garbage, vehicles and other debris as it currently is on Niles Street.

Staff response: Staff required a condition that the applicant must remove all construction debris, trash, and/or any material or other appurtenance at 37753 Niles Boulevard upon ten (10) days of the structure's relocation to 250 J Street. Because the development of at the new site at 250 J Street requires approval of the Development Organization staff and a "Letter of Intent" by the Zoning Administrator, staff will require an

orderly and maintained development of the site. A new condition is nonetheless added to explicitly require the applicant to develop the site in orderly and maintained fashion. (Condition 42)

- (d) The residence is too close to the rear lot line.

Staff response: Staff required the applicant to install tall growing trees at the rear yard area of the residence to mitigate the privacy concerns of the neighbor. Staff has also incorporated a new condition requiring the applicant and staff to explore additional alternatives such as clerestory windows and/or translucent (frosted) windows at the rear of the residence to reduce the privacy concern of the neighbor. (Condition 43)

- (e) Approval of the Variance will result add to the parking deficiency in the area.

Staff response: Please see "Staff Response" to Howards Appeal (e) above.

- (f) The lot's area is insufficient in accommodating such a structure.

Staff response: Please see "Staff Response" to Howards Appeal (f) above.

Enclosures: Exhibit "A" (Site Plan, Floor Plan and Elevations)
Exhibit "C" (Appeal and previous letters of the Howards and Roberts)

Exhibits: Exhibit "A" Site Plan, Floor Plan and Elevations
Exhibit "B" Findings and Conditions of Approval

Informational Exhibit "1" Site's Zoning and General Plan

Recommended Actions:

1. Hold public hearing.
2. Find the project PLN2003-00006 is categorically exempt per California Environmental Quality Act (CEQA) under Section 15303 as it relates to the construction of a single-family residence
3. Find PLN2003-00006 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use and Housing Chapters as enumerated within the staff report.
4. Uphold the Zoning Administrator decision to approve PLN2003-00006, as shown on Exhibit "A", subject to Finding and Conditions of Approval, and added Conditions of Approval (denoted by an asterisk (*)) in Exhibit "B".

Exhibit "B"

Findings and Conditions of Approval

PLN2003-0006 Variance for 250 J Street

Zoning Administrator Findings

On the basis of the information submitted, and a project review to ensure conformance with the General Plan, Zoning Ordinances and other development policies and provisions of the City of Fremont, I have made the following findings:

- a. This variance shall be subject to such conditions that will assure that the adjustment hereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located because the surrounding neighborhood contains many residences deemed preexisting, legal nonconforming where their required yard setbacks do not conform with current standards. The lot is a legal lot recorded in 1888 where, because of its size of only 2,500 SF and lot dimensions of 50 feet by 50 feet, it would be impractical to develop the lot for the use of a single family residence in conformance with the City's current standard for a R-1-8 zoning district.
- b. Because of special circumstance applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the Ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications because the subject property is significantly substandard. In general, the minimum standards for a lot in a R-1-8 zoning district are: a lot area of 8, 000 square feet, a lot width of 70 feet and a lot depth of a 100 feet. The lot in question does not meet any of those requirements, and therefore qualifies as a property in which unusual circumstances are applicable due to its size and shape warrants approval of a variance to reasonably develop it as a single-family dwelling in conformance uses permitted by the General Plan and Zoning Ordinance.
- c. The conditions or situation of the specific piece of property or the intended use of the property for which the variance is sought is not of so general or recurrent a nature as to make reasonable/practical the formulation of a general regulation for such conditions or situations because the preexisting, legal nonconforming lot, and lots in the Niles area in general, varying in size and shape are not found in any other R-1-8 zoning district in the City. Additionally, in the "Niles Density Study" conducted by staff, it was noted that the unique character of Niles would provide a strong basis for allowing variances in the future, but that each case would be individually evaluated by the Zoning Administrator. As such, the unique character of the lot in questions warrants such evaluation and approval.

Conditions of Approval (Revised text is underlined)

NOTE: It should be noted that the Conditions of Approval below are applicable only to the Variance herein, and are independent of the "Settlement Agreement" dated March 8, 2002 between the applicant and City for property located at 37553 Niles Boulevard. IN NO CASE are these Conditions of Approval intended to modify or supercede the "Settlement Agreement" reached between the applicant and City on March 8, 2002 for property located at 37553 Niles Boulevard or any subsequent "Settlement Agreement" entered into by the applicant and the City.

1. Within 30 days from the date of this approval letter, the applicant shall submit complete working plans of the proposed relocation of the residence from its present location at 37753 Niles Boulevard to 250 J Street, including the restoration and improvements plans of the residence to the City's Development Organization (D.O.). Along with this submittal the applicant and property owner(s) of 250 J Street must submit a "Letter of Intent" which clearly indicates the work, in details, that must be completed, including a time schedule, for the relocation and completion of the project at 250 J Street. Under the approval of this Variance, the schedule for the relocation and completion of the residence shall be subject to the review, approval and satisfaction of the City's Zoning Administrator. **Such requirement is applicable to the Variance itself and is independent of the "Settlement Agreement" dated March 8, 2002 reached**

between the applicant and City for property located at 37753 Niles Boulevard or any subsequent "Settlement Agreement" entered into by the applicant and the City.

2. Upon the completion of the relocation of the residence from 37753 Niles Boulevard to 250 J Street, the applicant shall be afforded ten-days to clear out and remove construction debris, trash, and/or any material or other appurtenances at the location at 37753 Niles Boulevard to the satisfaction of the Zoning Administrator. Once the clean up and removal of the items as listed are completed at 37753 Niles Boulevard, the lot shall be maintained free of litter and the security fencing shall also be maintained to bar unwanted persons from loitering on the site. No storage of any material, including storage sheds of any kind or the parking of vehicles, shall be permitted at the 37753 Niles Boulevard.
3. The applicant shall be cognizant of safety measures while relocating the structure to its new location. The applicant will obtain all necessary building permits, such as encroachment permits for the relocation of the structure. A security fencing of no less than 6' feet in height shall be placed on the perimeter at 250 J Street to bar any unauthorized persons, especially young children, from entering the site.
4. The applicant shall be required to restore the structure to its original condition, when feasible so as to retain the character of the structure to preserve the quality of the Niles residential neighborhood. All details and improvements shall be subject to D.O. review and approval.
5. The setbacks shall be as proposed in Exhibit "A".
6. The applicant shall provide two off-street parking spaces: (1) one covered by the incorporation of a new carport matching the characteristic, materials, colors, roof pitch and shingles of the residence; and (2) an uncovered parking space on the paved driveway built in conformance with the City's standard for a 10-foot driveway approach and apron.
7. The front walkway shall face J Street and shall be separated from the driveway apron. The front porch shall also be redesigned to allow entry from the front, facing J Street, requiring reconfiguration of the stairwell to the front of the residence.
8. The applicant shall incorporate front, side and rear yard landscaping for the residence. Such landscaping shall be automatically irrigated and shall include tall growing trees at the rear of the site to mitigate privacy concerns of the property abutting to the rear. Such trees, landscaping, and irrigation system shall be subject to the review and approval of D.O. staff.
9. Minor revisions of the architectural details may be permitted within the overall context of the approved design concept, subject to the approval of the Zoning Administrator during the Development Organization review process.
10. The project shall be subject to City-wide Development Impact Fees. These fees may include fees for fire protection, park facilities, parkland dedication in lieu, and capital facilities and traffic impact. These fees shall be calculated at the rate in effect at the time of building permit issuance.
11. Colors and materials shall be submitted during the D.O. review.
12. All metal roofs, including galvanized metals shall be coated with rust-inhibitive paint.
13. All mechanical equipment, including air conditioning units, and PG&E meters, shall be screened from view from adjacent public rights-of-ways and other uses, subject to the review and approval of staff during the Development Organization review process.
14. No antennas, including satellite dish antennas, shall be placed on the roof or in the front or side yard areas adjacent to the public rights-of-way. All antennas shall be screened from view from the public rights-of-way, subject to the review and approval of staff during the Development Organization review process.
15. Garbage or trash containers shall be suitably concealed behind permanent screening or fencing contiguous to the main structure, subject to review and approval of staff during the Development Organization review process.

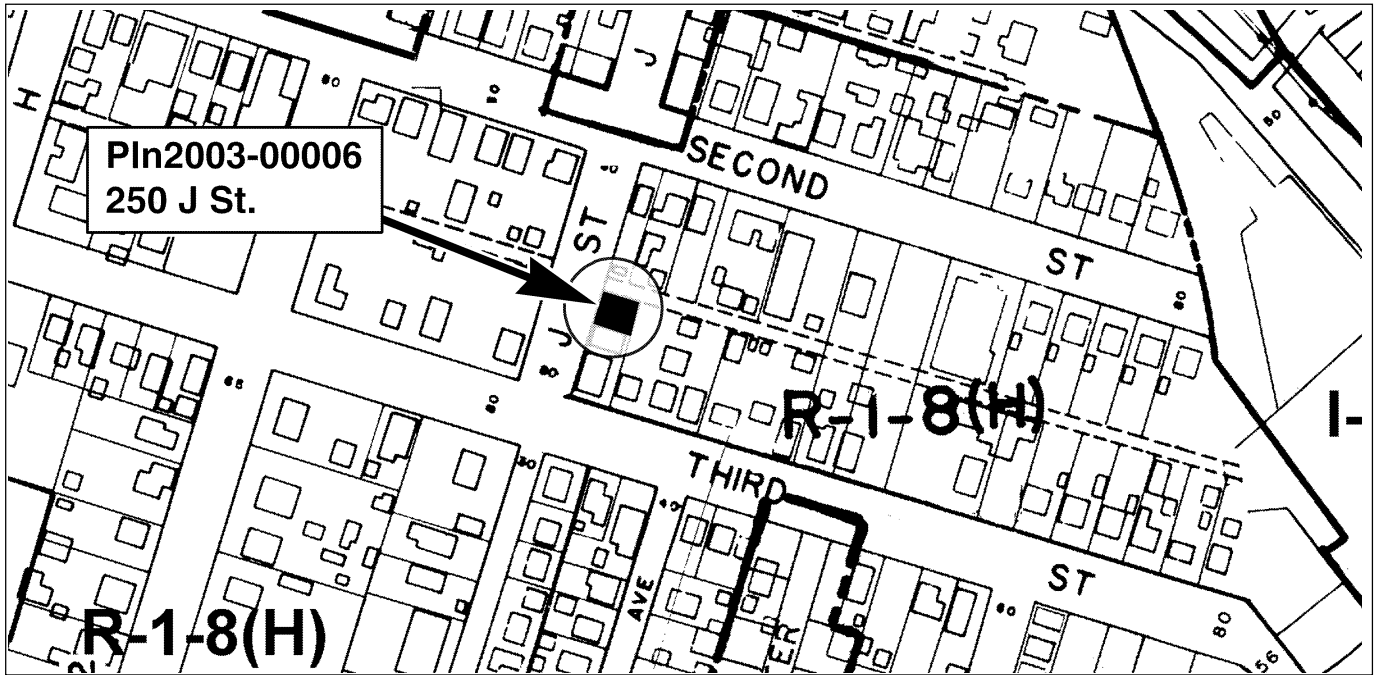
16. No exterior lighting shall be permitted except that which has a concealed source, subject to the review of staff during the Development Organization review process.
17. Street improvements are required on J Street, in accordance with the Street Right-of-Way and Improvement Ordinance. The applicant shall install complete street improvement on J Street across the project frontage. Street improvements include, but are not limited to, pavement, curb, gutter, landscaping, and sidewalk. The required street improvement shall be required prior to issuance of the building permit and shall be approved during the Development Organization review. The "Deferral in Time" as requested is not warranted and will not be allowed.
18. The residence must be designed to fit the existing topography of the site (J Street slopes down to the south) and that only minor grading will be permitted to provide proper and adequate drainage for the lot.
19. During Development Organization review the applicant shall obtain a final grading permit in conjunction with the building permit. A professional engineer registered in the State of California must prepare the final grading plan. Grading shall be subject to the approval of the City Engineer.
20. The applicant shall submit a detailed soils report, prepared by a qualified soils engineer registered by the State of California.
21. Grading operations shall be supervised by a registered civil engineer in accordance with the recommendations contained in the required soils report.
22. Site grading shall not obstruct natural flow from abutting properties or divert drainage from its natural watershed.
23. A disposal site for the off-site haul dirt materials or source for the import fill shall be approved by the City prior to the approval of the grading permit. The haul route for export cut or import fill shall be subject to approval of the City Engineer.
24. The applicant shall provide for a functional drainage system. The drainage system is subject to approval of the City Engineer and Alameda County Flood Control and Water Conservation District.
25. The project plans shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prohibit the entry of pollutants into storm water runoff. The plans will also include storm water quality measures for operation and maintenance of the project.
26. The applicant shall comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State of California Water Quality Control Board.
27. The project plan shall include erosion control measures to prevent soil, dirt, debris, or other pollutants from entering the storm drain system during and after construction, in accordance with the practices outlined in the Association of Bay Area Government's Erosion and Sediment Control Handbook, California Storm Water Best Management Practice Handbooks, and Regional Water Quality Control Board's Erosion and Sediment Control Field Manual. A separate plan shall be submitted for this purpose and shall be subject to review and approval of the City Engineer during the Development Organization process.
28. The applicant is responsible for ensuring that all contractors are aware of all storm water quality measures and that such measures are implemented. Failure to comply with the approved construction Best Management Practices will result in the issuance of correction notices, citations, or stop orders.
29. This project must meet all Hazardous Fire Area requirements, including but not limited to construction type and roof material, etc.

30. Plan, specifications, equipment lists and calculations for the required sprinkler system must be submitted to the Fremont Fire Department Authority and Building Department for review and approval prior to installation. A separate plan review fee is required. Standard Required: N.F.P.A 13
31. The applicant shall submit a site plan/civil utility plan indicating existing and proposed on-site fire hydrant locations, subject to approval by the City of Fremont Fire Department. The fire hydrant spacing requirement is 500 feet, measured as the fire engine travels on all-weather surfaces.
32. The lighted address of the residence must be visible from the public street.
33. The applicant must immediately notify the Fremont Fire Department, Hazardous Materials Unit of any underground pipes, tanks or structures; any suspected or actual contaminated soils; or other environmental anomalies encountered during site development activities. Any confirmed environmental liabilities will need to be remedied prior to proceeding with site development.
34. Prior to forming and framing, the architect/engineer shall submit a letter to the City certifying that the finished pad and floor elevations are consistent with the approved plans, subject to the review and approval of the Zoning Administrator.
35. During Relocation and Construction/Restoration of the Structure, the property owner shall be responsible for litter control and sweeping of all paved surfaces. All on-site storm drains shall be cleaned immediately before the start of the rainy season beginning on October 15 each year, subject to the review of the Building/Engineering inspector.
36. Any vehicle or equipment washing/steam cleaning must be done at an appropriately equipped facility which drains to the sanitary sewer. Outdoor washing must be managed in such a way that there is no discharge of soaps, solvents, cleaning agents or other pollutants to the storm drains. Wash water should discharge to the sanitary sewer, subject to review and approval of Union Sanitary District.
37. Construction activities shall be limited to the following hours of operation:
- 7 a.m. to 7 p.m. Monday through Friday
9 a.m. to 6 p.m. Saturday
No construction activities allowed on Sunday
- Failure to comply with the above mentioned hours of operation would result in the withholding of inspections.
38. Prior to release of building for occupancy, the project architect/engineer shall submit a letter to the City certifying that the building has been constructed in conformance with the approved architectural, subject to the review and approval of the Zoning Administrator.
39. The project engineer-of-record shall submit a letter to the City that the site grading and drainage are in conformance with the approved grading and drainage plans, subject to the review and approval of the Zoning Administrator.
40. This variance shall be subject to revocation or modification by the Zoning Administrator or City Council if the conditions of approval have not been fulfilled, or if the approval of the fence has resulted in a substantial adverse effect on the public health or general welfare.
41. The approval of this Variance shall expire 6 months from the date of issuance if necessary building permits are not obtained. An extension may be granted if the request is made prior to the expiration date of this Variance, subject to the approval of the Zoning Administrator.
42. The residence shall only be used a single-family residence. The applicant and property owner(s) shall agree to and record a written land use restriction in the form of a "Deed Restriction" provided by the City, for recordation with the County Recorder, subject to review and approval by the Zoning Administrator and City Attorney. Such undertaking shall be incumbent upon the applicant to obtain the necessary signatures required for execution of the Deed

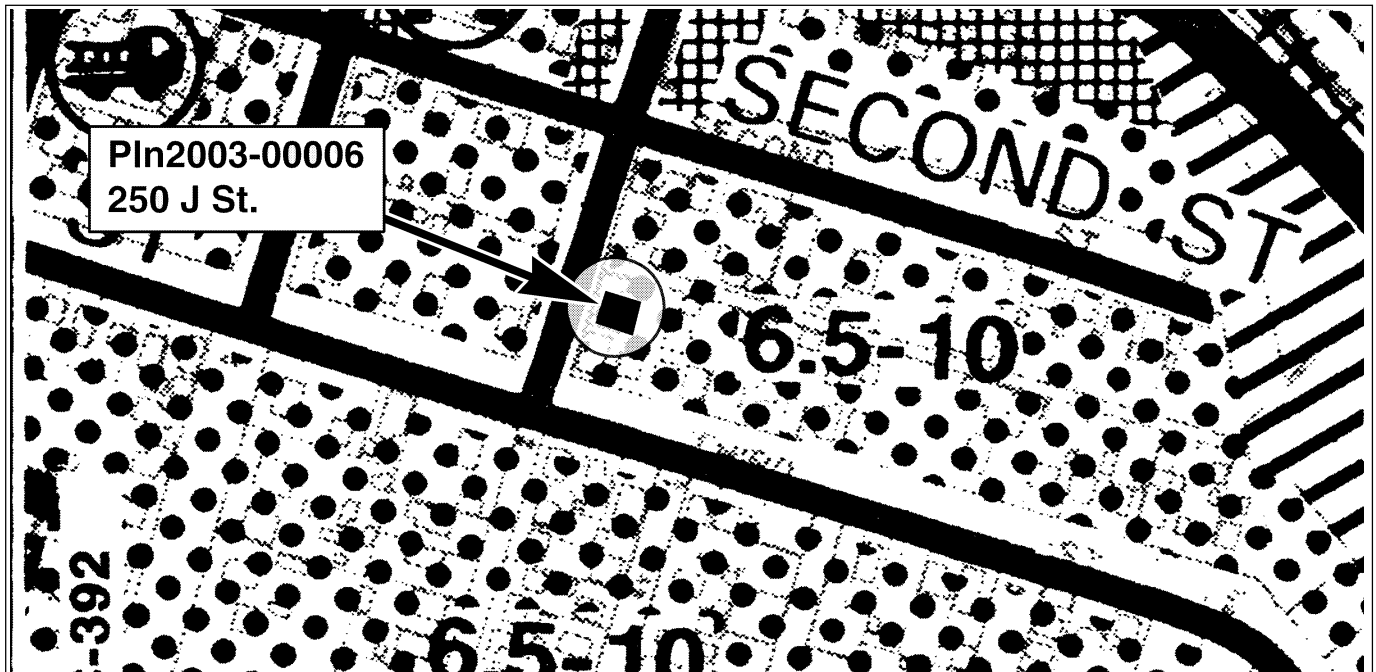
Restriction and cause it to be recorded in the office of the Alameda County Recorder, prior to issuance of a building permit.

- 43.** The applicant shall develop the lot at 250 J Street in an orderly and maintained manner. Unused and scrap construction material will be properly recycled or disposed. During the development of the site, no storage of unnecessary vehicles or material of any kind will be permitted, unless required for the development of the lot.
- 44.** Where feasible, the applicant and staff shall explore additional alternatives to address the privacy concern of the neighbor abutting to the rear, such as the incorporation of clearstory windows and/or the use of translucent windows at the rear of the residence.
- 45.** The approval of this Variance shall supercede and invalidate Variance V-81-7 approved on April 21, 1981.

INFORMATIONAL



Existing Zoning



Existing General Plan

Project Number: PLN2003-00006 (Variance)
Project Name: Cates Variance
Project Description: To consider an appeal of the Zoning Administrator's decision to allow a variance to building setback and parking requirements that would otherwise be required for the relocation, preservation and development of a single-family residence at 250 J Street in the Niles Planning Area.

Note: Prior arrangements for access are not required for this site.

